

APR 10 1998

Geraldine Threutelaar Crockett,
Clerk
/asw

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:

MINNIE ANN HINES,

Debtor(s).

) Case No. 97-30141
) Chapter 13
)
)
)

JUDGEMENT ENTERED ON APR 10 1998

**ORDER GRANTING MOTION OF HABITAT FOR HUMANITY
FOR RELIEF FROM STAY**

This matter is before the court on the Motion for Relief from Stay of Habitat for Humanity of Charlotte, Inc. The court has concluded that the debtor's use of her residence in violation of the terms of the Deed of Trust (e.g. allowing the property to be used for drug sales) constitutes "cause" for relief from the automatic stay. Consequently, the motion should be granted. The reasons that support this conclusion follow:

FINDINGS OF FACT

1. This court has jurisdiction of this matter pursuant to 28 U.S. C. § 157.
2. This matter was heard after proper notice to all parties in interest.
3. On January 17, 1997, the debtor filed a voluntary Petition for Relief Under Chapter 13 of the United States Bankruptcy Code.
4. Habitat for Humanity is the holder of a Promissory Note executed by the debtor which is secured by a first-priority Deed of

Trust on the house and lot used by the debtor as her residence. Habitat is in the business of providing housing at low cost and on favorable financing terms to people who have not been able to obtain home ownership. Here, as is often the case with Habitat housing, the property is located in an area where drug (and other) problems exist.

5. There is a provision in the Deed of Trust which provides that the debtor

will not perform or allow to be performed, on the Property, any act or omission to act, which act or omission would constitute a violation of any applicable building codes, zoning and land use laws, or other local, state or federal laws or regulations, including without limitation any such laws or regulations which prohibit the possession, use, consumption, or sale of any intoxicating substances.

6. There have been five pre-petition drug related arrests on the debtor's property, occurring on or about: (1) February 22, 1995; (2) April 20, 1995; (3) May 5, 1995; (4) May 22, 1996; and (5) June 12, 1996. Each such event is a violation of the terms of the Deed of Trust.

7. There have been three post-petition drug related arrests on the debtor's property on or about September 25, 1997. These arrests occurred in connection with the execution of a search warrant which resulted in the confiscation of three guns, crack cocaine, and large amounts of cash, from various rooms in the house. Additionally, drug paraphernalia and items used in the sale of drugs was found on the kitchen table.

8. There have been ten arrests arising out of activity on the debtor's property since the Deed of Trust was signed. Three of these arrests have resulted in conviction. The resolution of the September 1997 arrests, however, is pending trial.

9. In addition: A police officer conducting surveillance of the debtor's property observed the debtor's companion, her son and a nephew repeatedly go to the third layer of vinyl on the side of the house, take out small items and complete drug transactions in the front yard of debtor's property. Another person pled guilty to possession of cocaine with intent to sell arising from an arrest on the front porch of debtor's residence. Debtor's companion has pled guilty to sale and delivery of crack cocaine from debtor's property. The debtor's companion has been arrested at the property five times and her son has been arrested there once since becoming an adult. There have been 60 calls to 911 relating to the debtor's property since she began occupying it. These incidents involve a variety of activities including assaults, shootings, disturbances and the like.

10. The debtor has been warned at least three times of the drug activity occurring on her property which violates the Deed of Trust. First, in July 1995, police officers had a discussion with the debtor about the drug activity on her property. Second, in January 1996, Habitat hand delivered a letter to the debtor, warning her that she was in default under the Deed of Trust because of four arrests which had occurred on the property. Finally, in

June 1996, the debtor went to the police station to pick up a juvenile who had been arrested on her property. At that time, a police officer again discussed with the debtor the drug related activity occurring on her property and told her she needed to do something about it.

11. There was no evidence offered that the debtor herself had engaged in unlawful activity. She has remained regularly employed during the time she has owned the residence. The debtor claimed to be active in her church. Nevertheless, the debtor made no real effort to stop the unlawful activities at her residence.

12. The debtor has made monthly payments to Habitat as required by the Note and is substantially current on the financial obligations of the Note and Deed of Trust. The debtor has equity in the property of approximately \$20,000 as a result of her payments and appreciation in the value of the property. The Deed of Trust provides that upon foreclosure and sale, the debtor would receive the benefit of the payments she had made plus a percentage of any appreciation of the value of the property based on a formula. This would likely amount to less than the debtor could obtain through sale of the property.

13. The debtor filed this bankruptcy case for the purpose of stopping Habitat's foreclosure of its Deed of Trust. The foreclosure proceeding had been completed, but debtor filed this case during the ten day upset bid period. From the debtor's schedules filed with her petition, it appears that her debts may be

satisfied from the property that secures them or from her earnings.

CONCLUSIONS OF LAW

14. This is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the parties and the subject matter and may enter a dispositive order.

15. Section 362 of the Bankruptcy Code provides that: "On request of a party in interest...the court shall grant relief from the stay provided by this subsection...(1) for cause, including the lack of adequate protection of an interest in property of such party in interest...." 11 U.S.C. § 362(d)(1).

16. The plain language of Section 362 contemplates relief from the automatic stay for non-monetary causes. The statute is not limited, but simply provides for relief for "cause." The clear implication of the phrase "including lack of adequate protection" is that "cause" includes other undefined causes.

17. There appears to be no controlling precedent involving a fact pattern similar to this case. Some guidance is provided by In re Yardley, 77 B.R. 643 (M.D. Tenn. 1987). That case involved a lease rather than a mortgage, and thus § 365 rather than § 362, but its analysis is persuasive. There the court concluded that the issue had to be determined on a case-by-case basis considering the nature of the parties, their past dealings and present commercial realities. 77 B.R. at 646 (quoting and citing other cases).

18. Application of factors similar to Yardley requires the conclusion here that relief from the stay must be granted. The Deed of Trust specifically prohibits allowing the property to be used for unlawful purposes. That is an important covenant to Habitat, given its mission and the location of the property securing its loan. The breach of the covenant in this case is a serious one that has been blatant and prolonged. The litany of criminal activity operated out of the debtor's property is shocking -- regular, ongoing and pervasive felonious activity including sales of crack cocaine, assaults, shootings and the like. This activity has not been incidental or sporadic, but has occurred continuously over a period of years. Although the debtor has not been accused of this activity herself, the major perpetrators were a companion who lived in the house with her, her son and a nephew. The house itself has been used as an instrument in the drug sales: The description of the house at the time of the 1997 police search demonstrated the existence of drugs, guns, cash, and drug packaging paraphernalia in all rooms of the house; the vinyl siding was used as a drug stash; and the front porch was used for drug sales.

19. The debtor contended that she had not "allow[ed] to be performed" any of this unlawful activity, claiming that she was a victim of those around her. This argument strains credulity given the extent and duration of the criminal activities at the debtor's residence. The debtor's home and the people she held closest to her were dedicated to drug sales. The debtor has been warned of

the consequences of allowing this activity to persist, but has made no real effort to stop the activities. In fact, the debtor's omission to take action to stop the activity or to distance herself from the perpetrators may itself constitute unlawful activity. In the circumstances presented here, the court concludes that "allow" includes standing idly by, even as something of a victim.

20. The debtor appears unwilling and unable to change the nature of the activities at her home and to comply with the Deed of Trust in the future. There is no credible evidence that the activities that have been carried out on this property over the past several years will change in any way if relief from the stay is denied. There certainly is no assurance of future compliance with the Deed of Trust.

21. The nature of the unlawful activities on the debtor's property puts Habitat at risk of losing its collateral by forfeiture.

22. The interest of other creditors do not appear to be compromised by allowing relief from the automatic stay. Habitat completed its foreclosure proceeding (except for the upset bid period) prior to the bankruptcy case being filed. Other creditors listed in the debtor's petition appear to be secured by their own collateral or, to the extent they are unsecured, the debtor appears to have the ability to fund her plan from earnings.

23. Allowing completion of the foreclosure by Habitat may result in the debtor's losing the benefit of all of the

appreciation in the value of the property. That prejudice to the debtor is not a basis for denying relief from the stay here. It is simply the natural consequence of the covenant she agreed to and her violation of it over an extended period of time. When the debtor elected not to cure her default, she elected to suffer the consequences of that.

24. The equities and the balance of hardships here favor Habitat and granting relief from the stay.

25. For all of the above reasons, the court concludes that Habitat is entitled to relief from the automatic stay to continue its remedies against the debtor's property.

It is therefore ORDERED, ADJUDGED AND DECREED that the automatic stay of 11 U.S. C. § 362 is hereby terminated with respect to the debtor's real property in order to permit Habitat for Humanity to pursue its remedies under State law, including foreclosure upon the property.

Dated: April 9, 1998.



George R. Hodges
United States Bankruptcy Judge